IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1870 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SN CHRISTIAN

Versus

CHIEF METROPOLITAN MAGISTRATE

Appearance:

1. Special Civil Application No. 1870 of 2003

MR KR BRAHMBHATT for Petitioner No. 1

MR JB PARDIWALA for Respondent No. 1

MR KP RAVAL, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/09/2003

ORAL JUDGEMENT

RULE. Learned advocate Mr.Pardiwala waives service of rule on behalf of respondent No.1 and

Mr.Raval, learned AGP waives service of rule on behalf of respondent No.2. At the request of the parties, matter is taken up for final hearing today.

2) By filing this petition, the petitioner has prayed that appropriate writ, direction and order may be issued directing the respondent to give benefit of first higher grade pay scale to the petitioner in view of the Resolution at Annexure-C dated 13-6-1997. It is also prayed that the respondents may be directed to make payment of higher grade pay scale to the petitioner in view of the application at Annexure-A. The petitioner was denied the said benefit on the ground that he has come by way of inter-district transfer and, therefore, he is not entitled to that benefit. The petitioner also made a representation to the Chief Metropolitan Magistrate on 25-9-2001, in which he has stated that he was initially appointed as Reader in the Court of Judicial Magistrate First Class at Dahod by an order dated 6-7-1984. Petitioner was thereafter promoted on 13-6-1988 as Junior Clerk and he also passed departmental examination in the year 1992. Thereafter, petitioner was transferred by way of inter-district transfer and he has resumed his duty at the transferred with effect from 1-2-1994. The case of the petitioner is that he has passed both the departmental examinations and yet the said benefit is not given to him even though he has completed nine years of service on 12-6-1997. It was prayed that he may be given benefit of higher scale on his completing nine years service on 13-6-1997.

3) On behalf of the respondents, it is argued that since the petitioner had come by way of inter-district transfer, he is required to undergo nine years service at the transferred place and his earlier service, which he had rendered in other district cannot be computed for giving said benefit.

4) At the time of hearing of this petition, reliance is placed on the decision of the Division Bench of this Court given in LPA No.229/2003 and other cognate matters, by which it has been held in para 7 as under :

> "After having heard the learned advocates appearing for the parties and after examining and evaluating the factual profile of the entire matter and also after having considered the authorities cited before us, we are of the view that the order, passed by the learned Single Judge, requires interference under Clause 15 of

Letters Patent. The Hon'ble Supreme Court has, in the case of Dwijben Chandra Sarkar (Supra), specifically held "that the past service of the appellants is to be reckoned for the limited purpose of eligibility computing the number of years of qualifying service, to enable them to claim the higher grade under the scheme of time bound promotions. The Hon'ble Supreme Court has further held that the appellants will be entitled to the higher grade from the date on which they have completed 16 years computing the same by taking into account their past service in the Rehabilitation Department also along with the service in the P & T Department. They will be so entitled as long as they remained in the post of Assistant and till their normal promotion to a higher post according to Rules." Even the Division Bench of this Court in the case of State of Gujarat Vs. Ajitsinh Chaturji Rathod - LPA No.779 of 2000, decided on 4-12-2000, has taken the view that "mere transfer from Surat to Mehsana on the condition to be at the bottom, at the new station, upon request, would not, in any way, adversely affect the right to claim benefit of higher grade under the relevant G.R." In our view, the learned Single Judge is, therefore, not right in holding that for conferring of benefit of higher grade scale on completion of 9 years' service, the service rendered in Mehsana District Panchayat alone can be considered. This view is contrary to the view taken by the Hon'ble Supreme Court, in the case of Dwijben Chandra Sarkar (Supra), and the Division Bench judgement of this Court in the case of State of Gujarat Vs. Ajitsinh Chaturji Rathod (Supra)."

5) In view of the aforesaid position, this petition will have to be allowed and is accordingly allowed. The respondents are directed to consider the claim of the petitioner for higher grade pay scale in the light of the judgement of the Division Bench of this Court referred above and appropriate order in that connection may be passed expeditiously and whatever benefit is required to be given to the petitioner may be made available to him without any delay. This petition is accordingly allowed. Rule is made absolute. No order as to costs.

(P.B.Majmudar,J.)
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